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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 20060412

Application Number: 09/865,799
Filing Date: May 25, 2001
Appellant(s): Rodon

Connie M. Pielech
(*Reg. No. 46,991*)
 For Appellant

EXAMINER'S ANSWER

This examiner's answer has been prepared in response to appellant's brief on appeal filed

February 1, 2006.

(1) *Real Party in Interest*

A statement identifying by name the real party in interest is contained in the brief.

(Assignee of record, *Amadeus NMC Holding, Inc.*)

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.   (None.)

(3) *Status of Claims*

The statement of the status of claims contained in the brief is correct.

(Claims 1-5 remain pending but stand withdrawn.)

(Claims 6-11 are pending, rejected, and appealed.)

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(An amendment after final was submitted May 6, 2005 and was entered.)

(5) *Summary of Claimed Subject Matter*

The summary of claimed subject matter contained in the brief is correct.

(6)   Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal contained

in the brief is correct:

> I.   Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over
>
> Ahlstrom et al. (US 4,862,357), in view of Bunyan et al. (EP 1,076,307).

(7)   Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8)   Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, official notice, and

admitted prior art) relied upon in the rejection of claims under appeal:

US-4,862,357	Ahlstrom et al.	8/1989
EP-1,076,307	Bunyan et al.	2/2001

(9)   Grounds of Rejection

I.   <u>Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Ahlstrom et al. (US 4,862,357), in view of Bunyan et al. (EP 1,076,307).</u>

Ahlstrom et al. disclose a method for facilitating selection of travel itineraries

comprising: selecting one or more travel criteria; allowing a traveler to define traveler

preferences associated with the travel criteria and storing the traveler preferences in a traveler profile; deriving preference factors including a lowest fare multiplier, an available dates index, a non-stop service index, and an equipment type index for said travel criteria based on the traveler preferences; initiating a query of at least one travel information database for itineraries matching the selected travel criteria using an on-line search engine; calculating a travel value index for each itinerary using a travel value algorithm that subtracts preference factors from, or adds preference factors to, or both, an optimal value of the travel value index depending on the criteria matching itineraries; and, returning only itineraries where the travel value index thereof satisfies a traveler defined threshold, but Ahlstrom et al. do not disclose that the optimal value is fixed, nor do Ahlstrom et al. disclose that the threshold value that itineraries must surpass in order to be returned is an index value of the travel value index.

However, Bunyan et al. disclose a similar method, which method indeed includes that the travel value algorithm is defined in a manner such that an optimal value for the travel value index is fixed, and that the threshold value that itineraries must surpass in order to be returned is an index value of the travel value index. See, in particular, column 4, lines 39-54.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Ahlstrom et al. so as to include that the travel value algorithm is defined in a manner such that an optimal value for the travel value index is fixed, and that the threshold value that itineraries must surpass in order to be returned is an index value of the travel value index, in accordance with the teachings of Bunyan et al., in order to not overwhelm the customer by bombarding the customer with too many results/itineraries at once

by presenting only a manageable number of the best itineraries, and to facilitate an apples-to-apples comparison in travel value index between disparate itineraries or other travel options.

Regarding claim 7, the method of Ahlstrom et al. further comprises canceling before final completion of the query any itineraries that cannot satisfy the traveler defined threshold.

Regarding claim 8, Ahlstrom et al. disclose a method for facilitating selection of travel itineraries, as applied above in the rejection of claim 6, but Ahlstrom et al. do not specifically disclose that their travel value algorithm is defined in a manner such that an optimal value for the travel value index is approximately 100 percent. However, Bunyan et al. disclose a similar method, which method indeed includes that the travel value algorithm is defined in a manner such that an optimal value for the travel value index is approximately 100 percent. See, in particular, Figures 8 and 9, and column 4, lines 39-42.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Ahlstrom et al. so as to define the travel value algorithm in a manner such that an optimal value for the travel value index would be approximately 100 percent, in accordance with the teachings of Bunyan et al., in order to simplify the presentation of the results and make it easier for the user to discern how different a particular, less-than-optimal result would be from an optimal result.

Regarding claims 9-11, Ahlstrom et al. disclose a method for facilitating selection of travel itineraries, based on traveler preferences which include preferences involving fare, availability, service type, and equipment type, as applied above in the rejection of claim 6, but Ahlstrom et al. do not specifically disclose that the steps of selecting, allowing, deriving, and

initiating are performed over the Internet using a Web browser, nor that the preferences are modified using a Web browser in real time over the Internet and that then the steps of selecting, allowing, deriving, and initiating are repeated using the modified preferences. However, Bunyan et al. disclose a similar method, which method indeed includes that the selecting, allowing, deriving, and initiating are performed over the Internet using a Web browser (see column 3, lines 3-4), as well as modifying the preferences using a Web browser in real time over the Internet prior to repeating the steps of selecting, allowing, deriving, and initiating, using the modified preferences (see column 3, lines 23-26).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Ahlstrom et al. so as to use the Internet by means of a Web browser to perform the steps of selecting, allowing, deriving, and initiating, as well as to modify the preferences using a Web browser in real time over the Internet, then repeating the steps of selecting, allowing, deriving, and initiating using the modified preferences, all in accordance with the teachings of Bunyan et al., in order to reach as broad/widespread of a customer base as possible, and to allow customers as much flexibility as possible.

(10) **Response to Argument**

I.   <u>Claims 6-11 are unpatentable under 35 U.S.C. 103(a) for being obvious over</u>

<u>Ahlstrom et al. (US 4,862,357), in view of Bunyan et al. (EP 1,076,307).</u>

(A)   Regarding the argument that Bunyan et al. fail to disclose having a fixed optimal value of

the index (such as 100%), Bunyan et al. indeed disclose having a fixed optimal (*most favorable*

or desirable[1]) value of the index, that fixed *optimal* value being "100% (totally suitable),"

stating, for example, in column 4, lines 39-42:

> **"Optionally, the suitability rating can be normalised and expressed**
> **in a format which is easy to understand, e.g. a percentage from 0%**
> **(totally unsuitable) to 100% (totally suitable)."**

Additionally, it is well settled that *during patent examination the pending claims must be*

interpreted as broadly as their terms reasonably allow[2], as well as that, with regard to the

particular names/words/terms used by a reference, that *the disclosure in a reference must show*

the claimed elements arranged in the same manner as in the claims, but need not be in the

identical words as used in the claims in order to be anticipatory[3].

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[1] *The American Heritage Dictionary of the English Language, Third Edition (1992).*

[2] *In re Zletz,* 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

[3] *In re Bond,* 15 USPQ2d 1566 (Fed. Cir. 1990).

(B)   Regarding the argument that Bunyan et al. fail to disclose having a threshold value of the

index (i.e., a threshold filter, wherein the threshold is defined by some particular minimum value

of the index, such that the only items/results to be returned/presented would be those that were at

least equal to the threshold/minimum value), Bunyan et al. indeed disclose having a threshold

value of the index, stating, for example, in column 4, lines 43-48 (with emphasis added):

> **"When the holiday search module assesses the available holidays, it
> determines *the <u>most suitable ones</u> based on the suitability ratings,*
> optionally together with the confidence ratings. <u>*These*</u> are presented
> to the customer in a screen as shown in Figure 7."**

Figure 7 then shows a screen presenting those holidays having a suitability rating greater

than or equal to a threshold value of 80%, sorted in descending order of suitability.

Regarding the disclosure of a reference, *it is well settled that a reference stands for all of*

the specific teachings thereof as well as the inferences one of ordinary skill in this art would

have reasonably been expected to draw therefrom[4]*, presuming skill on the part of this person*[5].

In this case, it is the finding of the examiner, as trier-of-fact, that "the inferences one of ordinary

skill in this art would have reasonably been expected to draw" from the Bunyan et al. reference

(including Figure 7) would include that "the most suitable ones" of the holidays "based on the

suitability ratings" of the holidays found in the database would be "those holidays having a

suitability rating at least equal to some particular minimum threshold value of suitability."

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[4] *In re Fritch*, 23 USPQ2d 1780, 1782-83 (Fed. Cir. 1992) and *In re Preda*, 159 USPQ 342 (CCPA 1968).

[5] *In re Sovish*, 226 USPQ 771, 774 (Fed. Cir. 1985).

(C)   Regarding the argument that Ahlstrom et al. fail to disclose having a preference factor for

an equipment type index, Ahlstrom et al. indeed disclose having a preference factor for an

equipment type index. At the outset, the examiner notes that the method of Ahlstrom et al.

inherently includes a preference factor, the preference factor being equal to the logical value of

"1," or "True," the preference factor applied to an "equipment type index," the index being for

the equipment type equal to the value of "aircraft."

In any event, Ahlstrom et al. explicitly disclose having a preference factor for an

equipment type index, stating, for example, in column 11, lines 44-46:

> **"Program flow is next directed to step 244 where the scoring process
> takes into consideration a preference for a particular airline."**

Therefore, Ahlstrom et al. explicitly disclose having a preference factor for an equipment

type, the preference factor being applied to an equipment type index in the database, for

example, a preference for an equipment type of USAirways aircraft/equipment over an

equipment type of Delta aircraft/equipment.

(D)   Regarding the argument that there is no suggestion to combine the references, the

examiner recognizes that *obviousness can only be established by combining or modifying the*

teachings of the prior art to produce the claimed invention where there is some teaching,

suggestion, or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art[6,][7].

In this case, Bunyan et al. teach that raw scores are one way of looking at suitability

scores for comparing itineraries, and that normalizing the data by fitting the scores to a

percentage scale of 0% to 100% is an optional, alternative way of comparing the scores, stating,

for example, in column 4, lines 43-48 (with emphasis added):

> **"When the holiday search module assesses the available holidays, it
> determines *the <u>most suitable ones</u> based on the suitability ratings,*
> optionally together with the confidence ratings. *<u>These</u>* are presented
> to the customer in a screen as shown in Figure 7."**

Figure 7 then shows a screen presenting those holidays having a suitability rating greater

than or equal to a threshold value of 80%, sorted in descending order of suitability.

Bunyan et al. therefore indeed disclose the desirability of only presenting the most

suitable results, as opposed to bombarding the user with all results, even unsuitable ones.

Moreover, those of ordinary skill in the art would instantly and unquestionably recognize

the same desirability as reason to combine the teachings of the two applied prior art references.

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[6] *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

[7] *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

(E)   Regarding the argument that there would have been no reasonable expectation of success

for one of ordinary skill in the art in combining the two applied prior art references, the argument

offers no reasons in support thereof, except repeating applicant's earlier, erroneous arguments,

that (1) the prior art does not disclose all the features of applicant's claimed invention and (2)

there would have been no reason to combine the prior art references, and therefore, "If the

combination of references does not produce the claimed invention, then there is no reasonable

expectation of success." Notably, other than merely repeating his earlier arguments/positions,

applicant utterly fails to offer any actual argument whatsoever directly in support of his position

that there would have been no reasonable expectation of success in combining the prior art.

In any event, it is the finding of the examiner, as trier-of-fact, that it would have been

within the ability of one of ordinary skill in the art, at the time of the invention, to have modified

the method of Ahlstrom et al. so as to have included that the travel value algorithm would be

defined in a manner such that an optimal value for the travel value index would be a fixed value of

100%, and such that a threshold/minimum value would be defined to filter out itineraries below

the threshold/minimum value in order to be returned/displayed, in accordance with the teachings

of Bunyan et al., in order to not overwhelm the customer by bombarding the customer with too

many results/itineraries at once by presenting only a manageable number of the best itineraries,

and to facilitate an apples-to- apples comparison in travel value index between disparate itineraries

or other travel options, and that one of ordinary skill in the art performing such a modification

would have a reasonable expectation of success, since so doing could have been performed readily

and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk

of unexpected results, and since it is well settled that *the main test for the tenability of any*

conclusion of obviousness with respect to any proposed or hypothetical combination or

modification of prior art knowledge is whether or not such a combination or modification could

have been performed or implemented by any person of ordinary skill in the art, at the time of the

invention, with neither undue experimentation, nor risk of unexpected results[8].

(F)   Regarding the arguments that are non-responsive to any actual applied rejection, for

example, "arguments" that a reference does not show features which the rejection states the

reference does not show, the "arguments" have been deemed irrelevant, hence disregarded, since

the rejection(s) specifically acknowledged and addressed the stated omission(s), and since it is

well settled that *one cannot show nonobviousness by attacking references individually where the*

rejections are based on combinations of references[9]. Moreover, such arguments against the

references singly, rather than against the applied combination as a whole, which arguments are

therefore non-responsive to the actual rejection, thus fail to point out any supposed or alleged

error in the actual rejection, hence fail to provide any support/basis whatsoever for applicant's

appeal/position.

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[8] *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (CAFC 1986).

[9] *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091,
231 USPQ 375 (CAFC 1986).

For all of the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Gerald J. O'Connor
Primary Examiner
Group Art Unit 3627

GJOC

April 12, 2006

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